

**ORDINANCE NO. 11
SERIES OF 2016**

AN ORDINANCE OF THE TOWN OF CARBONDALE, COLORADO, APPROVING REVISIONS TO CHAPTER 6 OF THE MUNICIPAL CODE OF THE TOWN OF CARBONDALE TO REQUIRE APPLICANTS FOR MEDICAL AND RETAIL MARIJUANA LICENSURE TO PROVIDE CERTIFICATES OF GOOD STANDING, FULFILL CERTAIN LEASING REQUIREMENTS, ATTEND REQUIRED TRAININGS, SUBMIT TO INSPECTIONS, & TO ADOPT PROCEDURES FOR THE SUSPENSION & REVOCATION OF MEDICAL & RETAIL MARIJUANA LICENSES

WHEREAS, the Town has licensed and regulated retail and medical marijuana establishments for the past three years, and the Board of Trustees has identified changes or additions to existing provisions within the existing Retail Marijuana Licensing Ordinance and Medical Marijuana Licensing Ordinance that more effectively regulate marijuana licensing applications and Town's marijuana licensing approval, suspension, and revocation process;

WHEREAS, the Board of Trustees seeks to impose leasing, certificate of good standing, training, and inspection requirements for all marijuana licenses and to otherwise specifically authorize itself to impose conditions of approval for the issuance of licenses;

WHEREAS, the Board of Trustees seeks to enact the same procedures for retail and medical marijuana license suspension or revocation as already exist for liquor license suspension or revocation;

WHEREAS, the Board of Trustees finds, determines, and declares that it has the power to adopt this Ordinance pursuant to Article XX of the Colorado Constitution and the Home Rule Charter of the Town of Carbondale; and

WHEREAS, the Board of Trustees finds that it is in the interest of public health, safety, and welfare to adopt revisions to Chapter 6 in order to more effectively regulate retail and medical marijuana establishments.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO that:

1. Article 4 of the Town of Carbondale Municipal Code regarding *medical* marijuana licensing requirements shall be amended by deleting the language stricken and adding the language underlined to read as follows:

6-4-80. Licensing requirements and procedure; provisions applicable to all licenses.

...

(b) Application forms and supplemental materials. All applications for local licensing of retail marijuana establishments shall be made upon forms approved by the Board of

Trustees and provided by the Town Clerk. Applications shall be accompanied by the following documentation and information:

...

5) Proof of possession of the licensed premises. Proof of a lease or other written agreement authorizing the applicant to utilize the premises as a retail marijuana facility for a period of at least one year from the date of issuance of the license.

6) Disclosures related to ownership of the proposed business. Provide a Certificate of Good Standing from the Colorado Secretary of State, for applicants that are corporations, partnerships, or limited liability companies.

...

(f) Public hearing. The following public hearing procedure applies when an application has been deemed complete and has been found to comply with all zoning laws and other retail marijuana location restrictions set forth in Town laws. This public hearing procedure applies to any application for licensing of any retail marijuana establishment and to any application for licensing renewal if the renewal application is referred to the Board of Trustees by the Town Clerk pursuant to Section 6-5-180 of this Article.

...

4) The Board of Trustees may approve a medical marijuana establishment license with specific conditions. The Board of Trustees ~~has authority to~~ may refuse to issue ~~any a~~ a medical marijuana establishment license for good cause, subject to judicial review. The term good cause means that the applicant has violated, does not meet or has failed to comply with any of the terms, conditions or provisions of the Colorado Medical Marijuana Code or any rule and regulations promulgated pursuant thereto, or this Article or rules or regulations promulgated pursuant to this Chapter; the applicant has failed to comply with any special terms or conditions that were placed upon the licensee by the Town; or the proposed licensed premises cannot be supported by the existing infrastructure of the Town.

6-4-140. Ongoing license holder requirements; term of licenses; renewals.

...

(c) By signing and submitting a license application, the license holder consents to inspections of the licensed premises by Town personnel for purposes of determining compliance with Town and state law.

(d) By signing and submitting a license application, the license holder agrees to attend any marijuana industry training programs hosted by the Town. A license holder may designate an employee of the licensed premises to attend such training programs, in lieu of attending personally.

(e) ~~(e)~~ Any local license issued pursuant to this Article shall be valid for a period of one year from the date of issuance and shall automatically expire after the one-year period has run. A license holder must apply for the renewal of an existing license at least 60 days prior to the license's expiration date. If the license holder fails to file a timely ~~files a~~ renewal application ~~within 60 days prior to expiration~~, the licensee must provide a written explanation detailing the circumstances surrounding the late filing. If the Town accepts the application, then it may elect to administratively continue the license beyond the expiration date while it completes the renewal licensing process, in which case, the license holder shall pay a \$1,000.00 fee.

(f) ~~(d)~~ Upon receipt of an application for license renewal, the Town Clerk shall determine whether the requirements of this Article have been met. If the applicant for renewal has previously held the same license in the Town for two consecutive years in compliance with this Article and any special terms or conditions that were placed upon the licensee, and the Town Clerk otherwise determines that the requirements of this Article have been met, the Town Clerk may grant the license for renewal, in which case such license shall be ratified by the Board of Trustees on consent at a public meeting. In all other cases, the Town Clerk shall refer the application for license renewal to the Board of Trustees for review and a public hearing, pursuant to Section 6-5-110 of this Article

2. Article 5 of the Town of Carbondale Municipal Code regarding *retail* marijuana licensing requirements shall be amended by deleting the language stricken and adding the language underlined to read as follows:

6-5-110. Licensing requirements and procedure; provisions applicable to all licenses.

...

(b) Application forms and supplemental materials. All applications for local licensing of retail marijuana establishments shall be made upon forms approved by the Board of Trustees and provided by the Town Clerk. Applications shall be accompanied by the following documentation and information:

1) Area map. An area map of the Town that is drawn to scale and demonstrates that the proposed licensed premises complies with Town zoning and location restrictions by depicting the proximity of the proposed licensed premises to any school, day care home, alcohol or drug treatment facility, retail marijuana store or medical marijuana center.

2) List of employees. The names and addresses of any employees or proposed employees of the retail marijuana establishment.

3) ~~2)~~ Materials to comply with state law. Any such materials required to be provided to the State in order to receive a State-issued retail marijuana license pursuant to the Colorado Retail Marijuana Code and rules adopted pursuant thereto, including, by way of example, proof of possession of the licensed premises, disclosures related to ownership of the proposed business, fingerprints of the applicants and employees, building plans and security plans.

4) ~~3)~~ Supplemental materials to comply with local law. Any other documentation as may be necessary to effectively enforce this Article and other Town laws.

5) Proof of possession of the licensed premises. Proof of a lease or other written agreement authorizing the applicant to utilize the premises as a retail marijuana facility for a period of at least one year from the date of issuance of the license.

6) Disclosures related to ownership of the proposed business. Provide a Certificate of Good Standing from the Colorado Secretary of State, for applicants that are corporations, partnerships, or limited liability companies.

...

(f) Public hearing. The following public hearing procedure applies when an application has been deemed complete and has been found to comply with all zoning laws and other retail marijuana location restrictions set forth in Town laws. This public hearing procedure applies to any application for licensing of any retail marijuana establishment and to any application for licensing renewal if the renewal application is referred to the Board of Trustees by the Town Clerk pursuant to Section 6-5-180 of this Article.

...

5) The Board of Trustees may approve a retail marijuana establishment license with specific conditions. The Board of Trustees ~~has authority to~~ may refuse to issue ~~any a~~ a retail marijuana establishment license for good cause, subject to judicial review. The term good cause means that the applicant has violated, does not meet or has failed to comply with any of the terms, conditions or provisions of the Colorado Retail Marijuana Code or any rules or regulations promulgated pursuant thereto, or this Article or rules or regulations promulgated pursuant to this Chapter; the applicant has failed to comply with any special terms or conditions that were placed upon the licensee by the Town; or the proposed licensed premises cannot be supported by the existing infrastructure of the Town.

6-5-180. Ongoing license holder requirements; term of licenses; renewals.

...

(c) By signing and submitting a license application, the license holder consents to inspections of the licensed premises by Town personnel for purposes of determining compliance with Town and state law.

(d) By signing and submitting a license application, the license holder agrees to attend any marijuana industry training programs hosted by the Town. A license holder may designate an employee of the licensed premises to attend such training programs, in lieu of attending personally

(e) ~~(e)~~ Any local license issued pursuant to this Article shall be valid for a period of one year from the date of issuance and shall automatically expire after the one-year period has run. A license holder must apply for the renewal of an existing license at least 60 days prior to the license's expiration date. If the license holder fails to file a timely files a renewal application ~~within 60 days prior to expiration~~, the licensee must provide a written explanation detailing the circumstances surrounding the late filing. If the Town accepts the application, then it may elect to administratively continue the license beyond the expiration date while it completes the renewal licensing process, in which case, the license holder shall pay a \$1,000.00 fee.

(f) ~~(d)~~ Upon receipt of an application for license renewal, the Town Clerk shall determine whether the requirements of this Article have been met. If the applicant for renewal has previously held the same license in the Town for two consecutive years in compliance with this Article and any special terms or conditions that were placed upon the licensee, and the Town Clerk otherwise determines that the requirements of this Article have been met, the Town Clerk may grant the license for renewal, in which case such license shall be ratified by the Board of Trustees on consent at a public meeting. In all other cases, the Town Clerk shall refer the application for license renewal to the Board of Trustees for review and a public hearing, pursuant to Section 6-5-110 of this Article

3. Section 6-1-90, Section 6-4-150, and 6-5-190 of the Town of Carbondale Municipal Code shall be deleted in their entirety, and a new Article 7 within Chapter 6 of the Town of Carbondale Municipal Code shall be enacted, as provided below in underlined text, to uniformly regulate the suspension or revocation of liquor, medical marijuana, and retail marijuana licenses:

ARTICLE 7 – Suspension, revocation or nonrenewal of a liquor license, retail marijuana license, or medical marijuana license.

(a) Grounds. Proceedings for suspension, revocation or nonrenewal of a license shall be commenced upon a request made by the Chief of Police to the Board of Trustees after a full investigation and determination that there is probable cause of a violation of local or state law.

(b) Public hearing procedures for suspension, revocation or nonrenewal of license.

(1) Once probable cause exists for suspension, revocation or nonrenewal of a license, the Board of Trustees shall set a time and place for a public hearing for consideration and a determination of the outcome for the subject license.

(2) The Board of Trustees shall appoint a hearing officer to preside over the public hearing. The hearing officer shall be either a Municipal Judge or any individual that the Board of Trustees deems qualified to conduct such hearings. The hearing officer shall hear and receive evidence and render a decision on the applicable law and the facts.

(3) Notice of the date, time and place of the public hearing, the alleged violations of local and state law and the grounds for probable cause that may result in suspension, revocation or nonrenewal of the subject license shall be provided to the

licensee at least 14 days prior to the public hearing. Notice shall be provided by personal delivery to the licensee by a member of the Police Department, and the Town Clerk shall mail written notice of the public hearing to the licensee by certified mail at the last address furnished by the licensee to the Town.

(4) All hearings before the hearing officer shall be conducted in accordance with the following procedures:

a. The hearing officer shall have the power to administer oaths, issue subpoenas, receive evidence, regulate the course of the hearing, control the decorum and conduct of the proceedings and, when necessary, grant continuances. In the event of a continuance, no advertised public notice of such continued hearing shall be required.

b. The hearing need not be conducted according to the technical rules relating to evidence and witnesses. However, irrelevant and unduly repetitious evidence shall be excluded.

c. The Town Prosecutor shall prosecute the licensee on behalf of the Town.

d. All hearings shall be open to the public unless otherwise authorized or permitted by applicable law.

e. Prior to the hearing, all documents and other items of evidence shall be marked as exhibits with such identifying symbols as may be necessary to determine the exhibit referred to by any witness or other person. At the hearing, presentation shall be made by the Town staff and the Town Prosecutor, followed by questions by the hearing officer to staff. Presentation of evidence may then be made by the complainant, if any. Presentation of evidence may then be made by the licensee. The hearing officer shall provide time for rebuttal by the Town Prosecutor, the complainant, if any, and the licensee.

f. A record of the entire proceedings shall be by any means of permanent recording. The recording shall be retained by the Town Clerk for at least six months following the hearing.

(5) If a settlement and stipulation have not been reached prior to the public hearing pursuant to Subsection (c) below, the hearing officer shall make a written determination within 30 days after the close of the hearing. The written determination shall contain findings of fact and conclusions of law based on the evidence presented at the hearing. The Town Clerk shall provide a copy of the written determination to the licensee.

(6) The hearing officer may require a license holder to participate in a particular type of training and/or suspend any license, or the hearing office may revoke a license permanently, based on evidence of good cause therefor presented at the hearing. In the event of revocation, suspension or cessation of business, no portion of the license fee or any taxes shall be refunded.

(7) Whenever a decision to suspend a license for 14 days or less becomes final, the licensee may, before the operative date of the suspension, petition the Town Clerk or Town Manager for permission to pay a fine in lieu of a license suspension. Upon

receipt of the petition, the Town may, in its sole discretion, grant the petition to pay a fine in lieu of a license suspension. The fine in lieu shall be the equivalent of 20 percent of the licensee's estimated gross revenues from sales during the period of suspension; but said fine shall not be less than \$200.00 nor greater than \$5,000.00. Payment of any fine accepted in lieu of having a license suspended shall be in the form of cash, certified check or cashier's check. Recognizing that there is a potential adverse effect on the youth and community of the Town because of violations of licenses, 50 percent of any fine accepted in lieu of having a license suspended shall be deposited into a Town Liquor & Marijuana Educational Fund, and the remainder shall be deposited in the Town's General Fund.

(c) Settlement and stipulation. Prior to the issuance of any written determination of the hearing officer regarding the subject license, Town staff or the Town Prosecutor prosecuting the licensee on behalf of the Town, as the case may be, may enter into a settlement and stipulation with the licensee, including requiring a license holder to participate in a particular type of training. In the event of a settlement and stipulation, Town staff or Prosecutor shall impose a fine in lieu of suspension of the license. Payment of any fine accepted in lieu of having a license suspended shall be in the form of cash, certified check or cashier's check. Recognizing that there is a potential adverse effect on the youth and community of the Town because of violations of licensure, 50 percent of any fine accepted in lieu of having a license suspended shall be deposited into a Town Liquor & Marijuana Education Fund, and the remainder shall be deposited into the Town's General Fund.

(d) Appeals. The licensee shall have the right to appeal to the Board of Trustees and may, thereafter, seek judicial review. The Town Attorney shall act on behalf of and advise the Board of Trustees. The Board of Trustees shall not review de novo and shall only reverse a determination of the hearing officer if it determines that there was insufficient evidence in the record to support the judgment. The Board of Trustees may uphold or reverse the hearing officer's determination or refer the matter back for further proceedings.

INTRODUCED, READ AND PASSED this 8th day of June, 2016.

THE TOWN OF CARBONDALE


Dan Richardson, Mayor Pro Tem

ATTEST:


Cathy Derby, Town Clerk

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